



Billing Code: 5001-06

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 56

[Docket ID: DOD-2016-OS-0115]

RIN 0790-AJ04

Nondiscrimination on the Basis of Disability in Programs or Activities Assisted or Conducted by the DoD and in Equal Access to Information and Communication Technology Used by DoD, and Procedures for Resolving Complaints

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of Defense (DoD) is proposing to amend its regulations prohibiting unlawful discrimination on the basis of disability in programs or activities receiving Federal financial assistance from, or conducted by, DoD. These revisions update and clarify the obligations that section 504 of the Rehabilitation Act imposes on recipients of Federal financial assistance and DoD Components, in order to incorporate current statutory provisions, requirements from judicial decisions, and comparable provisions implementing title II of the Americans with Disabilities Act (ADA). The regulation is further revised to implement section 508 of the Rehabilitation Act, as applicable to the DoD Components, in order to provide policy concerning accessibility of DoD information and communication technology. Additionally, the regulation provides the procedures pursuant to sections 504 or 508 of the Rehabilitation Act.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) number and title, by any of the following methods:

- Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: DoD cannot receive written comments at this time due to the COVID-19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name and docket number or RIN for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Randy Cooper, 703-571-9327.

SUPPLEMENTARY INFORMATION:

I. Background

This Notice of Proposed Rulemaking (“NPRM”) proposes to amend 32 CFR part 56, “Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of Defense” by updating the nondiscrimination obligations that section 504 imposes on recipients of Federal financial assistance and DoD Components; modifying this rule to include the obligations that section 508 imposes on DoD Components; and clarifying the complaint resolution procedures applicable to allegations of noncompliance.

Congress enacted section 504 to prohibit discrimination on the basis of disability in federally assisted and federally conducted programs or activities. Executive Order 11914, “Nondiscrimination with Respect to the Handicapped in Federally Assisted Programs,”

authorized the then Department of Health, Education, and Welfare (HEW) to coordinate enforcement of section 504. This authority was later transferred to the Department of Health and Human Services. On November 2, 1980, this authority was transferred to the Attorney General by Executive Order 12250, “Leadership and Coordination of Nondiscrimination Laws” (45 FR 72995). On August 11, 1981, the Department of Justice (DOJ) promulgated a final rule, 28 CFR part 41, transferring the guidelines issued by HEW and designating them as part of the Attorney General’s civil rights coordination regulations.

Consistent with the DOJ section 504 coordination regulation, on April 8, 1982, DoD promulgated 32 CFR part 56, implementing section 504 within the Department (47 FR 15124). Thirty-seven years later, there is a compelling need to clarify and update this regulation to ensure that DoD policies reflect current Federal law and policies regarding discrimination on the basis of disability.

Congress has amended certain provisions of the Rehabilitation Act of 1973, Public Law 93–112 (Sept. 26, 1973) (Rehabilitation Act), necessitating revisions to the Department’s Section 504 federally conducted programs and activities regulation.¹ The Americans with Disabilities Act of 1990, Public Law 101–336 (July 26, 1990) (ADA), revised the Rehabilitation Act to include definitions of the terms “drugs” and “illegal use of drugs,” explaining that these terms were to be interpreted consistent with the principles of the Controlled Substances Act, 21 U.S.C. 801 et seq. See 29 U.S.C. 705(10). The ADA also amended the Rehabilitation Act to expressly exclude from coverage an individual who is currently engaging in the illegal use of drugs. See

¹ See, e.g., Public Law 99–506 (Oct. 21, 1986); Public Law 100–259 (Mar. 22, 1988); Public Law 100–630 (Nov. 7, 1988); Public Law 101–336 (July 26, 1990); Public Law 102–569 (Oct. 29, 1992); Public Law 103–382 (Oct. 20, 1994); Public Law 105–220 (Aug. 7, 1998); Public Law 107–110 (Jan. 8, 2002); Public Law 110–325 (Sept. 25, 2008); Public Law 113–128 (July 22, 2014).]

29 U.S.C. 705(10), (20)(C). The Rehabilitation Act Amendments of 1992, Public Law 102–569 (Oct. 29, 1992) (the 1992 Amendments), adopted the use of “person first” language+ e by changing the term “handicapped person” to “individual with a disability” and provided that the standards applied under title I of the ADA shall apply to determinations of employment discrimination under section 504. More recently, the ADA Amendments Act of 2008 (ADA Amendments Act), Public Law 110–325 (Sept. 25, 2008), revised the meaning and interpretation of the definition of “disability” under section 504 to align them with the ADA. In addition, there have been significant Supreme Court decisions interpreting section 504 requirements relating to the principles of “direct threat” and reasonable accommodation. *See, e.g., Sch. Bd. of Nassau Cty. v. Arline*, 480 U.S. 273 (1987); *Alexander v. Choate*, 469 U.S. 287 (1985); *Se. Cmty. Coll. v. Davis*, 442 U.S. 397 (1979). Congress codified both the principle of direct threat and the requirement for reasonable modifications in title II of the ADA.

Below is a summary of some of the major additions, deletions, and modifications to the 1982 regulation implementing section 504 that are included in this proposed rule.

The DoD proposes to add a new provision at subpart D that affirmatively states the longstanding section 504 obligation to provide reasonable modifications in policies, practices, and procedures, unless those changes can be shown to pose a fundamental alteration to the program or activity or an undue financial and administrative burden. The extent of the obligation to modify policies, practices, or procedures was first enunciated by the Supreme Court in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979). *Davis* held that while section 504 prohibits the exclusion of an otherwise qualified individual with a disability from participation in a federally funded program solely by reason of the individual’s disability, section

504 does not require program or policy modifications that would fundamentally alter the nature of the provider's program.

Subsequently, in *Alexander v. Choate*, 469 U.S. 287 (1985), which addressed a section 504 challenge to a State policy reducing the annual number of days of inpatient hospital care covered by the State's Medicaid program, the Court implicitly acknowledged that the obligation to provide reasonable modifications could be considered as an affirmative obligation, noting, "the question of who is 'otherwise qualified' and what actions constitute 'discrimination' under the section would seem to be two sides of a single coin; the ultimate question is the extent to which a grantee is required to make reasonable modifications in its programs for the needs of the handicapped." *Id.* at 299 n.19. *Alexander* also introduced the concept of undue financial and administrative burden as a limitation on the reasonable modification obligation. In responding to the petitioners' contention that any durational limitation on inpatient coverage in a State Medicaid plan is a violation of section 504, the Court stated: "It should be obvious that the administrative costs of implementing such a regime would be well beyond the accommodations that are required under Davis." *Id.* at 308.

Over the past several decades, in keeping with these Supreme Court decisions, Federal courts and Federal agencies have regularly acknowledged Federal agencies' affirmative obligation to ensure that recipients of Federal funding provide reasonable modifications in programs and activities to qualified individuals with disabilities unless the recipient can demonstrate that making these modifications would fundamentally alter the program or activity or result in an undue financial and administrative burden. The Department's existing regulations include a provision requiring DoD and recipients of federal financial assistance to provide reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid

discrimination on the basis of disability, unless the DoD or the recipient of federal financial assistance can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity or result in undue financial and administrative burdens.

In addition, when Congress enacted the ADA Amendments Act, it expressly provided that a covered entity need not provide a reasonable modification to policies, practices, or procedures to an individual who meets the definition of disability under the “regarded as” prong. ADA Amendments Act, sec. 6(a)(1). While Congress did not specifically apply this provision of the ADA Amendments Act to section 504, the DoD believes that it is equally appropriate to apply this limitation to reasonable modifications under section 504 and proposes to adopt this limitation in this regulation.

In addition, the DoD notes that the necessary reasonable modifications will vary based on the need of the individual and the impact of the modification on the DoD or the recipient of federal financial assistance.

Lastly, section 508 was enacted in 1986, and subsequent amendments and implementing regulations require Federal agencies to develop, procure, use, and maintain accessible information and communication technology and develop section 508 complaint resolution procedures.

A. Purpose

The proposed rule reaffirms that the purpose of the regulation is to establish and implement policy, assign responsibilities, and prescribe procedures to prevent unlawful discrimination on the basis of disability in programs or activities that receive Federal financial assistance from, or are conducted by, a DoD Component. Section 56.31 has also been added to establish and implement section 508 policy regarding the accessibility of DoD information and

communication technology by individuals with disabilities who are Federal employees or members of the public.

B. Applicability

The proposed rule applies to DoD Components, the programs or activities conducted by DoD Components and all recipients of Federal financial assistance from any DoD Component.

C. Definitions

The proposed rule adds and updates definitions of key terms used within the text of the rule to reflect the most current Federal law and policies under both sections 504 and 508, including terms such as disability; information and communication technology; program or activity; and video remote interpreting services.

D. Prohibition against Unlawful Discrimination

The section regarding prohibition of discrimination has been significantly updated to reflect the most current Federal statutes and regulations, as well as developments in Supreme Court jurisprudence, regarding unlawful discrimination on the basis of disability. Consistent with congressional intent, the provisions in the proposed rule are consistent with the nondiscrimination provisions in Department of Justice (DOJ) regulations implementing title II of the Americans with Disabilities Act (applicable to state and local government entities).

Title II and Section 504 are generally understood to impose similar requirements, given the similar language employed in the ADA and the Rehabilitation Act and the congressional directive that the ADA be construed to grant at least as much protection as provided by the regulations implementing the Rehabilitation Act. *See, e.g.*, 42 U.S.C. 12201(a).² Many of the

² The 1992 Amendments revised the Rehabilitation Act's findings, purpose, and policy provisions to incorporate language acknowledging the discriminatory barriers faced by persons with disabilities, and recognizing that persons

proposed changes are intended to conform the regulation’s provisions to corresponding provisions in the title II regulation, which was updated in 2010.

Provisions were added or modified to reflect topics including relationship to other laws, self-evaluation, notice, illegal use of drugs, maintenance of accessible features, retaliation or coercion, personal devices and services, service animals, mobility devices, direct threat, program accessibility, and communications.

E. Information and Communication Technology

Generally, “electronic and information technology,” the statutory term used in section 508, is referred to as “information and communication technology,” consistent with the section 508 regulations published at 36 CFR part 1194. In the definition of “auxiliary aids and services” at § 56.4, however, the term “electronic and information technology” is used in order to provide consistency with the Title II regulatory definition at 28 CFR 35.104.

F. Responsibilities of DoD Officials

The proposed rule makes technical and conforming changes to the responsibilities of DoD officials and DoD Components to reflect changes in DoD organization structures since 1982 and the added or modified responsibilities included in other sections of the proposed rule. For example, the proposed rule adds and then specifies the responsibilities of the Chief Information Officer regarding policies and procedures related to the implementation of section 508 as section 508 did not exist in 1982.

with disabilities have the right to “enjoy full inclusion and integration in the economic, political, social, cultural and educational mainstream of American society.” 29 U.S.C. 701(a)(3) as amended. The legislative history to the 1992 Amendments states “[t]he statement of purpose and policy is a reaffirmation of the precepts of the Americans with Disabilities Act, which has been referred to as the 20th century emancipation proclamation for individuals with disabilities. It is the Committee's intent that these principles guide the policies, practices, and procedures developed under all titles of the [Rehabilitation] Act.” S. Rep. 102–357 at 14 (Aug. 3, 1992); H.R. Rep. 102–822 at 81 (Aug. 10, 1992).

G. Responsibilities of Recipients of Federal Financial Assistance

The proposed rule includes clarifications, updates, and technical and conforming changes relating to responsibilities of recipients of Federal financial assistance. It clarifies, for example, that a written assurance must be submitted by a recipient in accordance with this proposed rule or the DoD Grant and Agreement Regulations (DoDGARS) issued by the Under Secretary of Defense for Research and Engineering (R&E). The clarification reduces burdens on recipients subject to DoDGARS.

H. Assurance and Compliance Information and Procedures

The proposed rule includes clarifications, updates, and technical and conforming changes to the policies and procedures applicable to “Assurances by Recipients and Compliance Information and Procedures Applicable to Recipients.” For example, provisions specify that the assurance must meet the requirements of this rule or DoD Grant and Agreement Regulations (DoDGARS) issued by the Under Secretary of Defense for Research and Engineering (R&E). This provision was included to avoid undue burden on recipients that are subject to DoDGARS. The provisions in the proposed rule regarding compliance information and procedures have been clarified and updated to reflect current approaches regarding: securing compliance, including voluntary compliance; conducting periodic compliance reviews; and requests for information from and reports by recipients.

I. Complaint Resolution and Enforcement Procedures Applicable to Recipients of Federal Financial Assistance

The proposed rule includes clarifications, updates, and technical and conforming changes relating to “Complaint Resolution and Enforcement Procedures Applicable to Recipients.” For example, under the “applicability” provision, the proposed rule clarifies that complaints

concerning employment against DoD Components must be processed in accordance with procedures established by the Equal Employment Opportunity Commission, and not procedures specified in this proposed rule.

Additional modifications include who may file a complaint; content of complaints; maintenance of a log; evaluation of complaints (including the addition of criteria for determining good cause for rejecting the sufficiency of a complaint); pre-investigation mediation; investigation of complaints; preliminary findings and decisions; recommended administrative action; and enforcement. Also, the proposed rule includes provisions governing coordination with other agencies.

J. Complaint Resolution and Enforcement Procedures Applicable to Programs and Activities Conducted by DoD Components

The proposed rule includes updates, clarifications, and technical and conforming changes relating to “Complaint Resolution and Enforcement Procedures Applicable to DoD Components.” For example, it clarifies that these complaint resolution procedures do not apply to allegations of employment discrimination, which are subject to other procedures applicable to DoD and other Federal agencies. Also, the procedures apply to section 508 complaints in addition to section 504 complaints.

Additional clarifications and updates relate to who may file a complaint; filing of informal complaints; when and how to file complaints; acceptance of complaints; maintenance of a log; determining which complaints to investigate; reports of investigations; voluntary compliance; final administrative decisions; and coordination with other agencies. Further, clarifications are included regarding the conduct of compliance reviews and the submission of compliance reports.

II. Authority for this Regulatory Action

Title 29, United States Code. Chapter 16, subchapter V, sections 794 through 794d, codifies legislation prohibiting discrimination on the basis of disability under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Federal agency, including provisions establishing the United States Access Board and requiring Federal agencies to ensure that information and communication technology is accessible to and usable by individuals with disabilities.

Title 28, Code of Federal Regulations, Part 41 implements Executive Order 12250, which assigns the Department of Justice responsibility to coordinate implementation of section 504 of the Rehabilitation Act.

III. Expected Impact of the Proposed Rule

Finalization of this Department-wide rule will clarify the longstanding policy of the Department and do not change the Department's practices in addressing issues of discrimination. This rule updates the Department's prior regulation to include updated accessibility standards for recipients of federal financial assistance to be more user-friendly and support individuals with disabilities.

IV. Regulatory Procedures

Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"

Executive Orders 12866 and 13563 direct agencies to assess all cost and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both cost and benefits, reducing cost, harmonizing rules, and promoting flexibility.

This rule is not a significant regulatory action and has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs”

This rule is not expected to be an EO 13771 regulatory action because this rule is not significant under EO 12866.

2 U.S.C. Ch. 25, “Unfunded Mandates Reform Act”

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately \$141 million. This rule will not result in the expenditure by state, local, and Tribal governments, in the aggregate, or by the private sector, of \$141 million or more in any one years, and it will not significantly or uniquely affect small governments.

Moreover, section 4(2) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1503(2), excludes from coverage under that Act any proposed or final Federal regulation that “establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.” Therefore, this rulemaking is not subject to the provisions of the Unfunded Mandates Reform Act.

Public Law 96-354, “Regulatory Flexibility Act” (5 U.S.C. Ch. 6)

The Department of Defense certifies that this proposed rule is not subject to the Regulatory Flexibility Act because it would not if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 56 does impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. These reporting requirements have been approved by OMB and assigned four OMB Control Numbers as per OMB Form 83-C: 4040-0001 (Research and Related), 4040-0007 (Assurances-Non-Construction Programs, 4040-0010 (Project Performance Site Locations), and 4040-0013 (Disclosure of Lobbying Activities) for Standard Form series 424 (SF-424). SF-424 refers to a standard form required for use as a cover sheet for submission of pre-applications and applications and related information under discretionary programs. There are no changes expected in burden or content based on the finalization of this rule.

Executive Order 13132, “Federalism”

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. This proposed rule will not have a substantial effect on State and local governments.

Executive Order 12250

Under Executive Order 12250, Executive agencies must submit regulations implementing Section 504 of the Rehabilitation Act to the Department of Justice to ensure consistent and effective implementation of various laws prohibiting discriminatory practices in Federal programs and programs receiving Federal financial assistance. This proposed rule has been reviewed and cleared by the Department of Justice in accordance with Executive Order 12250.

List of Subjects in 32 CFR Part 56

Administrative practice and procedure, Buildings and facilities, Civil rights, Communications, Grant programs, Individuals with disabilities, Reporting and recordkeeping requirements.

Accordingly, 32 CFR part 56 is proposed to be revised to read as follows:

PART 56—UNLAWFUL DISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM, OR CONDUCTED BY, THE DOD AND IN ACCESSIBILITY OF INFORMATION AND COMMUNICATION TECHNOLOGY

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56.29 Complaint resolution and enforcement procedures applicable to recipients of Federal financial assistance.

56.30 Complaint resolution and enforcement procedures applicable to programs and activities conducted by DoD components.

56.31 Complaint resolution and enforcement procedures applicable to accessibility of information and computer technology.

Authority: 29 U.S.C. 794-794d, 28 CFR part 41, Executive Order 12250.

Subpart A—General

§ 56.1 Purpose and broad coverage.

(a) *Purpose.* (1) The purpose of this part is to implement section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of disability in services, programs, and activities receiving Federal financial assistance, or conducted by Executive agencies or the United States Postal Service.

(2) The purpose of this part is also to implement section 508 of the Rehabilitation Act, as amended, 29 U.S.C. 794d, which requires that when Federal departments and agencies develop, procure, maintain, or use information and communication technology, they shall ensure accessibility by individuals with disabilities who are Federal employees or applicants, or members of the public.

(b) *Broad coverage.* Consistent with the ADA Amendments Act's purpose of reinstating a broad scope of protection under both the ADA and section 504, the definition of "disability" in this part shall be construed broadly in favor of expansive coverage to the maximum extent permitted by the terms of section 504. The primary object of attention in cases brought under section 504 should be whether the DoD and entities receiving federal financial assistance have complied with

their obligations and whether discrimination has occurred, not whether the individual meets the definition of “disability.” The question of whether an individual meets the definition of “disability” under this part should not demand extensive analysis.

§ 56.2 Application.

(a) Where applicable to recipients of Federal financial assistance from a DoD Component, this part applies to each recipient of Federal financial assistance from a DoD Component that provides assistance to services, programs, or activities that involve individuals with disabilities in the United States. This part also applies to each service, program, or activity receiving such assistance that involves individuals with disabilities in the United States. This part does not apply to recipients of Federal financial assistance from a DoD Component that provide assistance to services, programs, or activities outside the United States that do not involve individuals with disabilities in the United States. In addition, this part does not apply to services, programs, or activities outside the United States that receive such assistance that do not involve individuals with disabilities in the United States.

(b) Where applicable to recipients of Federal financial assistance from a DoD Component, the requirements of this part do not apply to the ultimate beneficiaries of any service, program, or activity receiving Federal financial assistance.

(c) Where applicable to services, programs, and activities conducted by a DoD Component, this part applies to all services, programs, and activities that involve individuals with disabilities in the United States. This part does not apply to services, programs, or activities conducted outside the United States that do not involve individuals with disabilities in the United States.

§ 56.3 Relationship to other laws.

Other laws. This part does not invalidate or limit the remedies, rights, and procedures of any other Federal laws, or State or local laws (including State common law) that provide greater or equal protection for the rights of individuals with disabilities or individuals associated with them.

§ 56.4 Definitions.

For purpose of this part, these terms mean the following—

2004 ADA Accessibility Guidelines (ADAAG). The requirements set forth in appendices B and D to 36 CFR part 1191 (2009).

2010 Standards. The 2010 ADA Standards for Accessible Design, which consist of the 2004 ADAAG and the requirements contained in 28 CFR 35.151.

Applicant. One who submits an application, request, or plan required to be approved by the designated DoD official or by a primary recipient, as a condition of eligibility for Federal financial assistance.

Auxiliary aids and services. Includes—

(1) Qualified interpreters on site or through video remote interpreting (VRI) services; note takers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;

(2) Qualified readers; taped texts; audio recordings; Brailled materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision;

(3) Acquisition or modification of equipment or devices; and

(4) Other similar services and actions.

Award official. The DoD Component official with the authority to approve and execute assistance agreements and to take other assistance-related actions authorized by this part or related DoD regulations.

Current illegal use of drugs. Illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem.

Department of Defense ("DoD") component. Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD.

Direct threat. (1) Except as provided in paragraph (2) of this definition, a significant risk of substantial harm to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services as provided in § 56.11.

(2) With respect to employment as provided in § 56.15, the term as defined by the Equal Employment Opportunity Commission's regulation implementing title I of the Americans with Disabilities Act of 1990, at 29 CFR 1630.2(r).

Disability. With respect to an individual:

- (1) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- (2) A record of such an impairment; or
- (3) Being regarded as having such an impairment, as described in 28 CFR 35.108(f).

Drug. A controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

Existing facility. A facility in existence on any given date, without regard to whether the facility may also be considered newly constructed or altered under this part.

Facility. All or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

Federal financial assistance. Any grant, cooperative agreement, loan, contract (other than a direct Federal procurement contract or a contract of insurance or guaranty), subgrant, contract under a grant or any other arrangement by which the DoD Component provides or otherwise makes available assistance in the form of:

- (1) Funds;
- (2) Services of Federal personnel;
- (3) Real and personal property or any interest in or use of such property, including:

- (i) Transfers or leases of such property for less than fair market value or for reduced consideration; and
 - (ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government;
- (4) Any other thing of value by way of grant, loan, contract or cooperative agreement.

Historic preservation programs. Programs conducted by a recipient or DoD Component that have preservation of historic properties as a primary purpose.

Historic properties. Those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under State or local law.

Illegal use of drugs. The use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). The term illegal use of drugs does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

Individual with a disability. A person who has a disability. The term *individual with a disability* does not include an individual who is currently engaging in the illegal use of drugs, when the recipient or DoD Component acts on the basis of such use.

Information and communication technology (formerly referred to as electronic and information technology). Information technology and other equipment, systems, technologies, or processes, for which the principal function is the creation, manipulation, storage, display, receipt, or transmission of electronic data and information, as well as any associated content. Examples of ICT include, but are not limited to: Computers and peripheral equipment; information kiosks and transaction machines; telecommunications equipment; customer premises equipment;

multifunction office machines; software; applications; Web sites; videos; and electronic documents.

Other power-driven mobility device. Any mobility device powered by batteries, fuel, or other engines—whether or not designed primarily for use by individuals with mobility disabilities—that is used by individuals with mobility disabilities for the purpose of locomotion, including golf cars, electronic personal assistance mobility devices (EPAMDs), such as the Segway® PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair within the meaning of this section.

Program or activity receiving Federal financial assistance. All of the operations of any entity described in paragraphs (1) through (4) of this definition, any part of which is extended Federal financial assistance:

- (1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or
- (ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;
- (2)(i) A college, university, or other postsecondary institution, or a public system of higher education, or
- (ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;
- (3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship –

- (A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or
- (B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or
- (ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or
- (4) Any other entity which is established by two or more of the entities described in paragraphs (1), (2), or (3) of this definition.

Qualified individual with a disability. (1) Except as provided in paragraph (2) of this definition, an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a recipient or DoD Component; and

(2) With respect to employment, the definition of “qualified” in the Equal Employment Opportunity Commission’s regulation implementing title I of the Americans with Disabilities Act of 1990, at 29 CFR 1630.2(m), applies to this part.

Qualified interpreter. An interpreter who, via a video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators.

Qualified reader. A person who is able to read effectively, accurately, and impartially using any necessary specialized vocabulary.

Recipient. Any State or unit of local government, any instrumentality of a State or unit of local government, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

Section 504. Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended.

Section 508. Section 508 of the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, section 508, as added Pub. L. 99-506, Title VI, section 603(a), Oct. 21, 1986, 100 Stat. 1830), as amended.

Revised 508 standards. The standards for information communication technology (ICT) developed, procured, maintained, or used by agencies subject to Section 508 of the Rehabilitation Act as set forth in Chapters 1 and 2 (36 CFR part 1194, appendix A), and Chapters 3 through 7 (36 CFR part 1194, appendix C).

Service animal. Any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an

individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

State. Each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

Subrecipient. Any of the entities in the definition of “recipient” to which a recipient extends or passes on Federal financial assistance. A subrecipient is generally regarded as a recipient and has all of the duties of a recipient.

Ultimate beneficiary. One among a class of persons who are entitled to benefit from, or otherwise participate in, a program or activity receiving Federal financial assistance and to whom the protections of this part extend. The *ultimate beneficiary* class may be the general public or some narrower group of persons.

Video remote interpreting (VRI) service. An interpreting service that uses video conference technology over dedicated lines or wireless technology offering high-speed, wide-bandwidth video connection that delivers high-quality video images as provided in § 56.22(d).

Wheelchair. A manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor, or of both indoor and

outdoor locomotion. This definition does not apply to Federal wilderness areas; wheelchairs in such areas are defined in section 508(c)(2) of the ADA, 42 U.S.C. 12207(c)(2).

§ 56.5 Self-evaluation.

Each recipient shall, within 6 months of first receiving Federal financial assistance:

- (a) Evaluate its policies and practices to evaluate whether such policies and practices may involve discrimination on the basis of disability. The self-evaluation must contain a description of:
 - (1) Any areas examined and any problems identified within those areas.
 - (2) Any modification made or remedial steps taken to remedy any discrimination on the basis of disability.
- (b) Modify any policies or practices not meeting the requirements of section 504 of the Rehabilitation Act and this part or the DoD Component's policies.
- (c) Provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments.
- (d) Take the appropriate remedial steps to eliminate the discriminatory effects of any such policies or practices.
- (e) Maintain the self-evaluation for a period of three years following its completion and make it available to the DoD Component award official and the public, should they request it within the three-year period.

§ 56.6 Notice.

A recipient or DoD Component shall make available to employees, applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and

its applicability to the services, programs, or activities of the recipient or DoD Component, and make such information available to them in such manner as the head of the DoD finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this part.

Subpart B—General Requirements

§ 56.7 General prohibitions against discrimination.

(a) No qualified individual with a disability shall, solely on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a recipient or a DoD Component, or be subjected to discrimination by any recipient or DoD Component.

(b) A recipient or DoD Component, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

(1) Deny a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service;

(2) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(3) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(4) Provide different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others;

- (5) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the recipient's program;
 - (6) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;
 - (7) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.
- (c) A recipient or DoD Component may not deny a qualified individual with a disability the opportunity to participate in services, programs, or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.
- (d) A recipient or DoD Component may not, directly or through contractual or other arrangements, utilize criteria or methods of administration—
- (1) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;
 - (2) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's or DoD Component's program with respect to individuals with disabilities; or
 - (3) That perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.
- (e) A recipient or DoD Component may not, in determining the site or location of a facility, make selections—
- (1) That have the effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination; or

(2) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the service, program, or activity with respect to individuals with disabilities.

(f) A recipient or DoD Component, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(g) A recipient or DoD Component may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may a recipient or DoD Component establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. The programs or activities of entities that are licensed or certified by a recipient or DoD Component are not, themselves, covered by this part.

(h) A recipient or DoD Component shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the recipient or DoD Component can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity or result in undue financial and administrative burdens.

(i) A recipient or DoD Component is not required to provide a reasonable modification to an individual who meets the definition of “disability” solely under the “regarded as” prong of the definition of disability at 28 CFR 35.108(a)(1)(iii).

(j) A recipient or DoD Component shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.

(k) Nothing in this part prohibits a recipient or DoD Component from providing benefits, services, or advantages to individuals with disabilities, or to a particular class of individuals with disabilities beyond those required by this part.

(l) A recipient or DoD Component shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(m)(1) Nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit provided under section 504 or this part which such individual chooses not to accept.

(2) Nothing in section 504 or this part authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.

(n) A recipient or DoD Component may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by section 504 or this part.

(o) A recipient or DoD Component shall not exclude or otherwise deny equal services, programs, or activities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(p) A recipient or DoD Component may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities. However, the recipient or DoD Component must ensure that its safety requirements are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

(q) Nothing in this part shall provide the basis for a claim that an individual without a disability was subject to discrimination because of a lack of disability, including a claim that an individual with a disability was granted a reasonable modification that was denied to an individual without a disability.

(r) The exclusion of individuals without disabilities from the benefits of a program limited by federal statute or Executive order to individuals with disabilities or the exclusion of a specific class of individuals with disabilities from a program limited by federal statute or Executive order to a different class of individuals with disabilities is not prohibited by this part.

§ 56.8 Illegal use of drugs.

(a) General. (1) Except as provided in paragraph (b) of this section, this part does not prohibit discrimination against an individual based on that individual's current illegal use of drugs.

(2) A recipient or DoD Component shall not discriminate on the basis of illegal use of drugs against an individual who is not engaging in current illegal use of drugs and who—

(i) Has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully;

(ii) Is participating in a supervised rehabilitation program; or

(iii) Is erroneously regarded as engaging in such use.

(b) Health and drug rehabilitation services. (1) A recipient or DoD Component shall not deny health services, or services provided in connection with drug rehabilitation, to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.

(2) A drug rehabilitation or treatment program may deny participation to individuals who engage in illegal use of drugs while they are in the program.

(c) Drug testing. (1) This part does not prohibit a recipient or DoD Component from adopting or administering reasonable drug testing policies or procedures, including, but not limited, to drug testing, designed to ensure that an individual who formerly engaged in the illegal use of drugs is not now engaging in the illegal use of drugs.

(2) Nothing in paragraph (c)(1) of this section will be construed to encourage, prohibit, restrict, or authorize the conduct of testing for the illegal use of drugs.

§ 56.9 Maintenance of accessible features.

(a) A recipient or DoD Component shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities, in accordance by section 504 or this part.

(b) This section does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs.

(c) For a recipient, if the 2010 Standards reduce the technical requirements or the number of required accessible elements below the number required by UFAS, the technical requirements or the number of accessible elements in a facility subject to this part may be reduced in accordance with the requirements of the 2010 Standards.

§ 56.10 Retaliation or coercion.

(a) No recipient or DoD Component shall discriminate against any individual because that individual has opposed any act or practice made unlawful by this part, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under section 504 or this part.

(b) No recipient or DoD Component shall coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or

enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by section 504 or this part.

§ 56.11 Personal devices and services.

This part does not require a recipient or DoD Component to provide to individuals with disabilities personal devices, such as wheelchairs; individually prescribed devices, such as prescription eyeglasses or hearing aids; readers for personal use or study; or services of a personal nature including assistance in eating, toileting, or dressing.

§ 56.12 Service animals.

(a) General. Generally, a recipient or DoD Component shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

(b) Exceptions. The recipient or DoD Component may ask an individual with a disability to remove a service animal from the premises if—

(1) The animal is out of control and the animal's handler does not take effective action to control it; or

(2) The animal is not housebroken.

(c) If an animal is properly excluded. If a recipient or DoD Component properly excludes a service animal under §56.12, it shall give the individual with a disability the opportunity to participate in the service, program, or activity without having the service animal on the premises.

(d) Animal under handler's control. A service animal shall be under the control of its handler. A service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or

other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (*e.g.*, voice control, signals, or other effective means).

(e) Care or supervision. A recipient or DoD Component is not responsible for the care or supervision of a service animal.

(f) Inquiries. A recipient or DoD Component shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A recipient or DoD Component may ask if the animal is required because of a disability and what work or task the animal has been trained to perform. A recipient or DoD Component shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. Generally, a recipient or DoD Component may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (*e.g.*, the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).

(g) Access to areas of a recipient or DoD Component. Individuals with disabilities shall be permitted to be accompanied by their service animals in all areas of a recipient or DoD Component's facilities where members of the public, participants in services, programs or activities, or invitees, as relevant, are allowed to go.

(h) Surcharges. A recipient or DoD Component shall not ask or require an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets. If the recipient

or DoD Component normally charges individuals for the damage they cause, an individual with a disability may be charged for damage caused by his or her service animal.

(i) Miniature horses. (1) Reasonable modifications. A recipient or DoD Component shall make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability.

(2) Assessment factors. In determining whether reasonable modifications in policies, practices, or procedures can be made to allow a miniature horse into a specific facility, a recipient or DoD Component shall consider—

(i) The type, size, and weight of the miniature horse and whether the facility can accommodate these features;

(ii) Whether the handler has sufficient control of the miniature horse;

(iii) Whether the miniature horse is housebroken; and

(iv) Whether the miniature horses' presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

(3) Other requirements. Paragraphs (c) through (h) of this section, which apply to service animals, shall also apply to miniature horses.

§ 56.13 Mobility devices.

(a) A recipient or DoD Component shall permit individuals with mobility disabilities to use wheelchairs and manually-powered mobility aids, such as walkers, crutches, canes, braces, or other similar devices designed for use by individuals with mobility disabilities in any areas open to pedestrian use.

(b)(1) Use of other power-driven mobility devices. a recipient or DoD Component shall make reasonable modifications in its policies, practices, or procedures to permit the use of other power-driven mobility devices by individuals with mobility disabilities, unless the recipient or DoD Component can demonstrate that the class of other power-driven mobility devices cannot be operated in accordance with legitimate safety requirements that the recipient or DoD Component has adopted pursuant to § 56.13.

(2) Assessment factors. In determining whether a particular other power-driven mobility device can be allowed in a specific facility as a reasonable modification under paragraph (b)(1) of this section, a recipient or DoD Component shall consider—

- (i) The type, size, weight, dimensions, and speed of the device;
- (ii) The facility's volume of pedestrian traffic (which may vary at different times of the day, week, month, or year);
- (iii) The facility's design and operational characteristics (*e.g.*, whether its service, program, or activity is conducted indoors, its square footage, the density and placement of stationary devices, and the availability of storage for the device, if requested by the user);
- (iv) Whether legitimate safety requirements can be established to permit the safe operation of the other power-driven mobility device in the specific facility; and
- (v) Whether the use of the other power-driven mobility device creates a substantial risk of serious harm to the immediate environment or natural or cultural resources, or poses a conflict with Federal land management laws and regulations.

(c)(1) Inquiry about disability. A recipient or DoD Component shall not ask an individual using a wheelchair or other power-driven mobility device questions about the nature and extent of the individual's disability.

(2) Inquiry into use of other power-driven mobility device. A recipient or DoD Component may ask a person using another power-driven mobility device to provide a credible assurance that the mobility device is required because of the person's disability. The recipient or DoD Component that permits the use of another power-driven mobility device by an individual with a mobility disability shall accept the presentation of a valid, State-issued, disability parking placard or card, or other State-issued proof of disability as a credible assurance that the use of the other power-driven mobility device is for the individual's mobility disability. In lieu of a valid, State-issued disability parking placard or card, or State-issued proof of disability, the recipient or DoD Component shall accept as a credible assurance a verbal representation, not contradicted by observable fact, that the other power-driven mobility device is being used for a mobility disability. A “valid” disability placard or card is one that is presented by the individual to whom it was issued and is otherwise in compliance with the State of issuance’s requirements for disability placards or cards.

§ 56.14 Direct threat.

(a) This part does not require a recipient or DoD Component to permit an individual to participate in or benefit from the services, programs, or activities of that recipient or DoD Component when that individual poses a direct threat to the health or safety of others.

(b) In determining whether an individual poses a direct threat to the health or safety of others, a recipient or DoD Component must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to

ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures, or the provision of auxiliary aids or services will mitigate the risk

Subpart C—Employment

§ 56.15 Employment discrimination prohibited.

(a) No qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment under any service, program, or activity receiving Federal financial assistance from or conducted by a DoD Component.

(b) The standards used to determine whether paragraph (a) of this section has been violated shall be the standards applied under Title I of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12111 *et seq.*, and, as such sections relate to employment, the provisions of sections 501 through 504 and 511 of the ADA of 1990, as amended (codified at 42 U.S.C. 12201-12204, 12210), as implemented in the Equal Employment Opportunity Commission's regulation at 29 CFR part 1630.

Subpart D—Program Accessibility for Recipients of Federal Financial Assistance

§ 56.16 Discrimination prohibited.

Except as otherwise provided in §56.17, no qualified individual with a disability shall, because a recipient's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a recipient of Federal financial assistance from a DoD Component, or be subjected to discrimination by any recipient.

§ 56.17 Existing facilities.

(a) General. A recipient shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not—

(1) Necessarily require a recipient to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2) Require a recipient to take any action that would threaten or destroy the historic significance of an historic property; or

(3) Require a recipient to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the recipient believes that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, the recipient has the burden of proving that compliance with § 56.18(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of the recipient after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the recipient shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the recipient.

(b) Methods--(1) General. A recipient may comply with these requirements through such means as redesign or acquisition of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock

or other conveyances, or any other methods that result in making its services, programs, or activities readily accessible to and usable by individuals with disabilities. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. A recipient, in making alterations to existing buildings, shall meet the accessibility requirements of §56.18(c). In choosing among available methods for meeting the requirements of this section, a recipient shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.

(2) Safe harbor. Elements that have not been altered in existing facilities on or after November 5, 2019, and that comply with the corresponding technical and scoping specifications for those elements in the Uniform Federal Accessibility Standards (UFAS), appendix A to 41 CFR 101-19.6 (July 1, 2002 ed.), 49 FR 31528, app. A (Aug. 7, 1984), are not required to be modified in order to comply with the requirements set forth in the 2010 Standards.

(3) Historic preservation programs. In meeting the requirements of § 56.17 in historic preservation programs, a recipient shall give priority to methods that provide physical access to individuals with disabilities. In cases where a physical alteration to an historic property is not required because of paragraph (a)(2) or (3) of this section, alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with disabilities into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) Time period for compliance. When structural changes are necessary to make programs or activities in existing facilities accessible to the extent required by this section, such changes shall be made as soon as practicable, but not later than 3 years after June 1, 1982.

(d) Transition plan. In the event that structural changes to facilities will be undertaken to achieve program accessibility, a recipient that employs 50 or more persons shall develop, with the assistance of interested persons or organizations and within a period to be established in each DoD Component's guidelines, a transition plan setting out the steps necessary to complete the changes.

(1) A copy of the transition plan shall be made available for public inspection.

(2) The plan shall, at a minimum:

(i) Identify physical obstacles in the recipient's facilities that limit the accessibility of its programs or activities to individuals with disabilities;

(ii) Describe in detail the methods that will be used to make the facilities accessible;

(iii) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(iv) Identify the official responsible for implementation of the plan.

§ 56.18 New construction and alterations.

(a) Design and construction. Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after June 1, 1982.

(b) Alterations. Each facility or part of a facility altered by, on behalf of, or for the use of a recipient in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after June 1, 1982.

(c) Accessibility standards and compliance dates for recipients that are public entities. (1) If physical construction or alterations commence after June 1, 1982, but before [EFFECTIVE DATE OF THE FINAL RULE], then new construction and alterations subject to this section must comply with UFAS. Departures from particular requirements of UFAS by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

(2) If physical construction or alterations commence on or after [EFFECTIVE DATE OF THE FINAL RULE], but before [DATE ONE YEAR AFTER EFFECTIVE DATE OF THE FINAL RULE], then new construction and alterations subject to this section may comply with either UFAS or the 2010 Standards. Departures from particular requirements of either standard by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

(3) If physical construction or alterations commence on or after [DATE ONE YEAR FROM EFFECTIVE DATE OF THE FINAL RULE], then new construction and alterations subject to this section shall comply with the 2010 Standards.

(4) For the purposes of this section, ceremonial groundbreaking or razing of structures prior to site preparation do not commence physical construction or alterations.

(d) Accessibility standards and compliance dates for recipients that are private entities.

(1) New construction and alterations subject to this section shall comply with UFAS if the date when the last application for a building permit or permit extension is certified to be complete by a State, county, or local government (or, in those jurisdictions where the government does not certify completion of applications, if the date when the last application for a building permit or permit extension is received by the State, county, or local government) is before [EFFECTIVE DATE OF THE FINAL RULE], or if no permit is required, if the start of physical construction or alterations occurs before [EFFECTIVE DATE OF THE FINAL RULE].

(2) New construction and alterations subject to this section shall comply either with UFAS or the 2010 Standards if the date when the last application for a building permit or permit extension is certified to be complete by a State, county, or local government (or, in those jurisdictions where the government does not certify completion of applications, if the date when the last application for a building permit or permit extension is received by the State, county, or local government) is on or after [EFFECTIVE DATE OF THE FINAL RULE], and before [DATE ONE YEAR FROM EFFECTIVE DATE OF THE FINAL RULE], or if no permit is required, if the start of physical construction or alterations occurs on or after [EFFECTIVE DATE OF THE FINAL RULE], and before [DATE ONE YEAR FROM EFFECTIVE DATE OF THE FINAL RULE].

(3) New construction and alterations subject to this section shall comply with the 2010 Standards if the date when the last application for a building permit or permit extension is certified to be complete by a State, county, or local government (or, in those jurisdictions where the government does not certify completion of applications, if the date when the last application for a building permit or permit extension is received by the State, county, or local government) is on or after [EFFECTIVE DATE OF THE FINAL RULE], or if no permit is required, if the start

of physical construction or alterations occurs on or after [DATE ONE YEAR FROM EFFECTIVE DATE OF THE FINAL RULE].

(4) For the purposes of this section, ceremonial groundbreaking or razing of structures prior to site preparation do not commence physical construction or alterations.

(e) Noncomplying new construction and alterations. (1) Newly constructed or altered facilities or elements covered by §§ 56.18(a) and (b) that were constructed or altered before [EFFECTIVE DATE OF THE FINAL RULE], and that do not comply with UFAS, shall before [DATE ONE YEAR FROM EFFECTIVE DATE OF THE FINAL RULE], be made accessible in accordance with either UFAS or the 2010 Standards.

(2) Newly constructed or altered facilities or elements covered by §§ 56.18(a) and (b) that were constructed or altered before [EFFECTIVE DATE OF THE FINAL RULE] and that do not comply with UFAS shall, on or after [DATE ONE YEAR FROM EFFECTIVE DATE OF THE FINAL RULE], be made accessible in accordance with the 2010 Standards.

(3) New construction and alterations of buildings or facilities undertaken in compliance with the 2010 Standards will comply with the scoping and technical requirements for a “public building or facility” regardless of whether the recipient is a public entity as defined in 28 CFR 35.104 or a private entity.

(f) Compliance with the Architectural Barriers Act of 1968. Nothing in this section relieves recipients whose facilities are covered by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), from their responsibility of complying with the requirements of that Act and any implementing regulations.

(g) Mechanical rooms. For purposes of this section, section 4.1.6(1)(g) of UFAS will be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces

that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of individuals with physical disabilities.

Subpart E—Program Accessibility for Programs and Activities Conducted by DoD Components

§ 56.19 Discrimination prohibited.

Except as otherwise provided in §56.20, no qualified individual with a disability shall, because a DoD Component's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities conducted by a DoD Component, or be subjected to discrimination by any DoD Component.

§ 56.20 Existing facilities.

(a) General. A DoD Component shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not--

- (1) Necessarily require a DoD Component to make each of its existing facilities accessible to and usable by individuals with disabilities;
- (2) Require a DoD Component to take any action that would threaten or destroy the historic significance of an historic property; or
- (3) Require a DoD Component to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity, or in undue financial and administrative burdens. In those circumstances where personnel of the DoD Component believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, the DoD Component has the burden of proving that compliance with §56.20(a) would result in such alteration or burdens. The decision

that compliance would result in such alteration or burdens must be made by the head of the DoD Component after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the DoD Component shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the DoD Component.

(b) Methods--(1) General. A DoD Component may comply with the requirements of this section through such means as redesign or acquisition of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock or other conveyances, or any other methods that result in making its services, programs, or activities readily accessible to and usable by individuals with disabilities. A DoD Component is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. A DoD Component, in making alterations to existing buildings, shall meet the accessibility requirements of the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and federal regulations implementing it. In choosing among available methods for meeting the requirements of this section, a DoD Component shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.

(2) Historic preservation programs. In meeting the requirements of § 56.20(a) in historic preservation programs, a DoD Component shall give priority to methods that provide physical access to individuals with disabilities. In cases where a physical alteration to an historic property

is not required because of paragraph (a)(2) of this section, alternative methods of achieving program accessibility include—

(i) Audio-visual materials and devices. Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Guides. Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Innovation. Adopting other innovative methods.

(iv) Time period for compliance. When structural changes are necessary to make programs or activities in existing facilities accessible to the extent required by this section, such changes shall be made as soon as practicable, but not later than 3 years after June 1, 1982.

(v) Transition plan. In the event that structural changes to facilities will be undertaken to achieve program accessibility, a DoD Component shall develop, with the assistance of interested persons or organizations and within a period to be established in each DoD Component's guidelines, a transition plan setting out the steps necessary to complete the changes.

(A) A copy of the transition plan shall be made available for public inspection.

(B) The plan shall, at a minimum:

(1) Identify physical obstacles in the DoD Component's facilities that limit the accessibility of its programs or activities to individuals with disabilities;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than 1 year, identify steps that will be taken during each year of the transition period; and

(4) Identify the official responsible for implementation of the plan.

§ 56.21 New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the DoD component shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with disabilities. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in the Architectural Barriers Act Accessibility Standards at 41 CFR 102-76.60, apply to buildings covered by this section.

Subpart F—Communications

§ 56.22 General.

(a)(1) A recipient or DoD Component shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.

(2) For purposes of this section, “companion” means a family member, friend, or associate of an individual seeking access to a service, program, or activity of a recipient or DoD Component, who, along with such individual, is an appropriate person with whom the public entity should communicate.

(b)(1) A recipient or DoD Component shall furnish appropriate auxiliary aids and services when necessary to afford qualified individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a recipient or DoD Component.

(2) The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is

taking place. In determining what types of auxiliary aids and services are necessary, a recipient or DoD Component shall give primary consideration to the requests of individuals with disabilities. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.

(c)(1) A recipient or DoD Component shall not require an individual with a disability to bring another individual to interpret for him or her.

(2) A recipient or DoD Component shall not rely on an adult accompanying an individual with a disability to interpret or facilitate communication except—

(i) In an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or

(ii) Where the individual with a disability specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances.

(3) A recipient or DoD Component shall not rely on a minor child to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available.

(d) A recipient or DoD Component that chooses to provide qualified interpreters via VRI services shall ensure that it provides—

(1) Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication;

- (2) A sharply-delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of his or her body position;
- (3) A clear, audible transmission of voices; and
- (4) Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI.

§ 56.23 Telecommunications.

- (a) Where a recipient or DoD Component communicates by telephone with applicants and beneficiaries, text telephones (TTYs) or equally effective telecommunications systems shall be used to communicate with individuals who are deaf or hard of hearing or have speech impairments.
- (b) When a recipient or DoD Component uses an automated-attendant system, including, but not limited to, voice mail and messaging, or an interactive voice response system, for receiving and directing incoming telephone calls, that system must provide effective real-time communication with individuals using auxiliary aids and services, including TTYs and all forms of FCC-approved telecommunications relay system, including Internet-based relay systems.
- (c) A recipient or DoD Component shall respond to telephone calls from a telecommunications relay service established under Title IV of the ADA in the same manner that it responds to other telephone calls.

§ 56.24 Information and signage.

- (a) A recipient or DoD Component shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(b) A recipient or DoD Component shall provide signage at all inaccessible entrances to each of its facilities, directing users to an accessible entrance or to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each accessible entrance of a facility.

§ 56.25 Duties.

This subpart does not require a recipient or DoD Component to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the recipient or DoD Component believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, the recipient or DoD Component has the burden of proving that compliance with this subpart would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of the recipient or DoD Component or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this subpart would result in such an alteration or such burdens, the recipient or DoD Component shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the recipient or DoD Component.

Subpart G—Information and Communication Technology Requirements

§ 56.26 Information and communication technology requirements.

(a) Accessible information and communication technology. A DoD Component must make information and communication technology accessible to individuals with disabilities in accordance with section 508 of the Rehabilitation Act.

(b) Development, procurement, maintenance, or use of information and communication technology. When developing, procuring, maintaining, or using information and communication technology, DoD Components shall ensure, unless an undue burden would be imposed on it, that the information and communication technology allows, regardless of the type of medium of the technology—

(1) Individuals with disabilities who are employees of DoD Components to have access to and use of information and data that is comparable to the access to and use of the information and data by employees of DoD Components who are not individuals with disabilities; and

(2) Individuals with disabilities who are members of the public seeking information or services from DoD Components to have access to and use of information and data that is comparable to the access to and use of the information and data by such members of the public who are not individuals with disabilities.

(c) Alternative means of access when undue burden is imposed. When development, procurement, maintenance, or use of information and communication technology that meets the standards published by the Access Board at 36 CFR part 1194 would impose an undue burden, the DoD Component shall provide individuals with disabilities covered by this section with the information and data involved by an alternative means of access that allows the individual to use the information and data.

Subpart H—Compliance Procedures

§ 56.27 Responsibilities.

(a) The Under Secretary of Defense for Personnel and Readiness (USD(P&R)), through the Executive Director, Force Resiliency (EDFR), reviews recommended administrative decisions proposed by the Office of Diversity, Equity, and Inclusion (ODEI) and issues final administrative decisions, when necessary, in accordance with §§ 56.29 through 56.31.

(b) Under the authority, direction, and control of the USD(P&R), the EDFR:

(1) Exercises authority, direction, and control over the Director, ODEI.

(2) Provides guidance to DoD Components when developing policies, procedures, and guidelines in support of this part.

(c) Under the authority, direction, and control of the EDFR, ODEI:

(1) Serves as the primary point of contact for the DoD Components, including when disseminating nondiscrimination policies, programs, and initiatives.

(2) Administers an effective civil rights program prohibiting discrimination on the basis of disability by:

(i) Overseeing the full implementation of and compliance with section 504 of the Rehabilitation Act, this part, and policies and plans related to unlawful discrimination on the basis of disability in federally assisted and conducted programs.

(ii) Ensuring no person is excluded from participation in, denied the benefits of, or subjected to unlawful discrimination on the basis of disability in any program or activity receiving Federal financial assistance from the DoD or conducted by DoD.

(iii) Overseeing DoD Component compliance reviews and collection of assurances as described in § 56.28 from recipients.

(iv) Reviewing compliance reports generated by the DoD Component heads in accordance with § 56.28.

(v) Ensuring all complaints of unlawful discrimination on the basis of disability in any recipient are referred to the appropriate DoD Component head and resolved in a timely manner.

(vi) Providing education, training, and technical assistance to the DoD Components on issues related to nondiscrimination policies, programs, and initiatives.

(vii) Providing advice to the USD(P&R) regarding the issuance of final administrative decisions resolving complaints of unlawful discrimination on the basis of disability and complaints of failure to make information and communication technology accessible to individuals with disabilities.

(viii) Managing formal mediation of complaints of unlawful discrimination on the basis of disability and complaints of failure to make information and communication technology accessible to individuals with disabilities.

(ix) Monitoring compliance with this part by personnel under the authority, direction, and control of the USD(P&R).

(3) Notifies and provides updates to the Civil Rights Division of the Department of Justice (DOJ) when, with regard to recipients, a DoD Component head:

(i) Defers an application.

(ii) Schedules a hearing.

(iii) Refuses or terminates assistance.

(iv) Undertakes an enforcement action.

(d) The Director, Defense Legal Services Agency, under the authority, direction, and control of the General Counsel of the Department of Defense, and in addition to the responsibilities in paragraph (e) of this section, the Director, Defense Legal Services Agency, provides for fair and

impartial administrative procedures, including, but not limited to, conducting hearings and issuing decisions as required in § 56.29.

(e) The DoD Component heads:

(1) In coordination with the EDFR, develop and maintain internal policies, procedures, and guidance to promote nondiscrimination on the basis of disability in programs or activities receiving Federal financial assistance from or conducted by the DoD Component.

(2) Oversee:

(i) Dissemination of all relevant internal policies and procedures and ensure implementation at all levels within their respective DoD Components.

(ii) Compliance with applicable DOJ and Equal Employment Opportunity Commission guidance, this part, and all implementing DoD Component parts.

(iii) Development of an effective compliance review program of applicants for and recipients of Federal financial assistance, in accordance with § 56.28.

(iv) Collection of assurances from recipients, as described in § 56.28.

(v) Compliance with the reporting requirements of this or other parts.

(vi) The complaint process for allegations of discrimination in violation of section 504 of the Rehabilitation Act against recipients of Federal financial assistance, which are processed in accordance with § 56.29.

(vii) The complaint process for allegations of discrimination in violation of section 504 of the Rehabilitation Act against DoD Components and allegations of failure by DoD Components to make information and communication technology accessible to individuals with disabilities in violation of section 508 of the Rehabilitation Act, which are processed in accordance with §§ 56.30 and 56.31.

- (3) Ensure the cooperation of applicants and recipients of Federal financial assistance with this part. Enforce the provisions of this part in accordance with § 56.31 if a recipient violates the policy of this section.
 - (4) Establish internal procedures for the prompt processing and disposition of complaints, including notice to both complainant and recipient regarding the respective rights and obligations of each party.
 - (5) Promptly review and investigate all complaints filed in accordance with this part unless the complainant and the party complained against agree to delay the investigation pending settlement negotiations.
 - (6) Provide technical assistance to recipients, when necessary, to aid them in complying with this part.
 - (7) Provide educational materials setting out the rights of beneficiaries, including the right to file complaints in accordance with this part, and obligations of recipients in accordance with this part.
 - (8) Prepare recommended administrative decisions, when applicable, for complaints of a violation of sections 504 or 508 of the Rehabilitation Act, for review and consideration by the USD(P&R) when issuing final administrative decisions.
- (f) The Chief Information Officer of the Department of Defense (DoD CIO):
- (1) Develops policies and procedures related to achieving implementation of and compliance with section 508 of the Rehabilitation Act.
 - (2) Provides advice regarding complaints for failure to make information and communication technology accessible to individuals with disabilities.

(g) Listed below are responsibilities of recipients of Federal financial assistance. Each recipient must:

(1) Submit to the DoD Component head a written assurance in accordance with § 56.28 or 32 CFR 22.510(b) and appendix B, where applicable.

(2) Designate at least one person to coordinate its efforts to comply with the obligations of section 504 of the Rehabilitation Act, who will:

(i) Investigate any complaints communicated to the recipient alleging the recipient's noncompliance with or any actions prohibited by section 504 of the Rehabilitation Act.

(ii) Make available to all interested individuals the name, office address, and telephone number of the employee or employees designated to coordinate its efforts.

(3) Notify applicants for employment, employees, beneficiaries, subrecipients, and participants, regardless of disability, of their rights. The notification must:

(i) State that the recipient does not discriminate on the basis of disability in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in its programs or activities with respect to access, treatment, or employment.

(ii) Be transmitted via methods which may include the posting of notices, transmission via electronic mail or text message, publication on the recipient's Internet Website, or in newspapers and magazines, placement of notices in recipient's publication, and distribution of memoranda or other written communications.

(4) Develop, adopt, and disseminate internal complaint procedures for the prompt processing and disposition of informal and formal complaints and appeals of violations of section 504 of the Rehabilitation Act. The procedures must:

(i) Comply with §§ 56.29 through 56.31.

(ii) Include directions on how and where to file complaints and appeal decisions made by DoD.

(5) Provide to the DoD Component award official in the application for Federal financial assistance:

(i) Notice of any lawsuit pending against the applicant alleging unlawful discrimination on the basis of disability related to the financial assistance received from DoD.

(ii) A statement regarding the applicant describing any compliance review relating to unlawful discrimination on the basis of disability conducted during the two-year period before the application and information concerning the agency or organization performing the reviews.

(iii) Reports of any compliance reviews conducted by other Federal agencies.

(6) Conduct a self-evaluation in accordance with §56.5.

(7) Maintain compliance information.

§ 56.28 Assurance requirements and compliance information and procedures applicable to recipients of Federal financial assistance.

(a) Assurance requirements for applicants and recipients: General. (1) Subject to the option described in paragraph (a)(3) of this section, applicants for and recipients of Federal financial assistance must include with their submission to the DoD Component a written assurance certification that meets the requirements of this section. The assurance must certify that, with respect to programs or activities that receive Federal financial assistance, such applicants or recipients will comply with the requirements of section 504 of the Rehabilitation Act and this part. Applicants also must submit any additional information that the DoD Component determines is necessary for a pre-award review. The applicant or recipient's acceptance of federal financial assistance is an acceptance of the obligation of the assurance certification and this section.

(2) At a minimum, the assurance submitted for purposes of compliance with this section of the part must state that:

(i) It is provided as a condition for the receipt of Federal funds.

(ii) The applicant or recipient agrees to:

(A) Compile and maintain records pursuant to § 56.28(g)(1)(i).

(B) Submit reports on its programs, as may be required by the DoD Component.

(iii) Where a recipient makes the funds available to sub recipients, subcontractors, or subgrantees, the applicant or recipient must notify and require the sub recipients, subcontractors or sub grantees to comply with section 504 of the Rehabilitation Act and this part.

(iv) Provide a basis for judicial enforcement.

(3) An applicant subject to 32 CFR part 22 who submits an assurance which meets the requirements in 32 CFR 22.510(b) and appendix B will be considered to have satisfied the requirements of this section of the part pertaining to the submission of assurances. For Federal financial assistance awards subject to the DoD Grant and Agreement Regulations, award officials:

(i) May include, in accordance with 32 CFR 22.510(b), an award term in each award that makes compliance with the requirements in this part a condition of receipt of funding under the award in order to satisfy the requirement for obtaining an assurance from recipients.

(ii) Follow the pre-award procedures in 32 CFR 22.420, which indicate that a DoD grant's officer (i.e., award official) must ensure that the recipient has provided all certifications and assurances required by Federal statute, Executive order, or codified regulation—unless they are to be addressed in award terms and conditions at the time of award—before determining that a potential recipient is qualified to receive an award.

(iii) If the DoD award official has reason to question the potential recipient's compliance with this part based on a review of any pre-award assurance received from the potential recipient in accordance with this section or compliance review of the potential recipient received before issuing the award, the award official should consult the personnel from the Component that is responsible for handling the civil rights' compliance review. Those personnel will inform the award official whether they have sufficient information to issue a written determination of compliance or if they will take additional steps in accordance with paragraph (e) or (f) of this section before making such a determination or taking any enforcement actions.

(iv) The DoD award official will maintain for each potential recipient the signed copy of any or all certifications and assurances, or proof of an electronic signature, in an easily accessible location for not less than the duration of the assistance and any additional time that reasonably may be necessary to enforce the terms, such as through an enforcement action.

(b) Duration of assurance--(1) Real property. When a DoD Component awards an assurance in the form of real property or assistance to acquire real property or structures on the property, the assurance will obligate the recipient or transferee during the period the real property or structures are used for the purpose for which Federal financial assistance is extended, or for another purpose in which similar services or benefits are provided. The transfer instrument must contain covenants running with the land which assure that the property will be used for such purposes and that nondiscrimination on the basis of disability will be enforced. Where applicable, the covenants must also retain a right for the DoD Component to recover the property if either covenant is broken.

- (2) Personal property. When a DoD Component provides assistance in the form of personal property, the assurance will obligate the recipient for as long as it continues to own or possess the property.
- (3) Other forms of assistance. In all other cases, the assurance will obligate the recipient for as long as Federal financial assistance is extended.
- (c) Continuing state and block grant programs. As a condition for the extension of Federal financial assistance, any recipient, State, or State agency administering a program that receives continuing Federal financial assistance subject to this part must provide to the DoD Component an assurance.
- (1) Primary recipients. Primary recipients must sign an assurance agreeing to conduct the program in compliance with section 504 of the Rehabilitation Act and this part. Where applicable, a primary recipient must collect assurances from sub recipients.
- (2) Assurance requirements. (i) All recipients must sign an assurance complying with the requirements of paragraph (a)(2) of this section.
- (ii) Assurances for primary recipients disbursing funds to sub recipients must include a requirement to collect assurances from sub recipients.
- (d) Compliance information and procedures: policies, procedures, and guidelines. (1) Whenever necessary, DoD Components will publish supplementary guidelines for nondiscrimination on the basis of disability in the programs and activities to which it disburses Federal financial assistance.
- (2) The EDFR must review and approve policies and procedures before DoD Components may issue them.
- (3) At a minimum, all relevant policies, procedures, and guidance must:

- (i) Contain a description of the:
 - (A) Types of programs and activities covered.
 - (B) Form of the assurances that must be executed in accordance with paragraph (a)(2) of this section or an assurance which meets the requirements in 32 CFR 22.510(b) and appendix B.
- (ii) List the data collection and reporting requirements for recipients, all of which must be cleared by the Office of Management and Budget pursuant to 44 U.S.C. 3501 (also known and referred to in this part as “The Paperwork Reduction Act.”)
- (iii) Identify procedures for filing, processing, investigating, and resolving complaints of discrimination on the basis of disability. Such procedures must include, at a minimum:
 - (A) The requirements for filing a complaint. The requirements must comply with §56.30(b).
 - (B) Notification that the DoD Component may require or permit a recipient to investigate a complaint if the recipient can comply with the investigation procedures in § 56.28 and internal DoD Component procedures.
 - (C) Notification of the right, at any time, to file suit in a Federal district court of competent jurisdiction and that such action immediately terminates the administrative process.
- (iv) Include requirements:
 - (A) For recipients to designate a responsible official to coordinate the implementation of the policies, procedures, and guidelines.
 - (B) For recipients to conduct a self-evaluation in compliance with self-evaluation requirements in § 56.5.
 - (C) For suggestions for affirmative action on behalf of qualified individuals with a disability.
 - (D) For the dissemination of program and complaint information to the public.

(E) About the frequency and nature of post-approval reviews conducted pursuant to paragraph (f) of this section.

(F) For any other actions or procedures necessary to implement this part.

(v) Contain examples of prohibited practices likely to arise with respect to those types of programs and activities.

(4) When the head of a DoD Component determines that it will not be appropriate to include one or more of the provisions described in this section in the supplementary guidelines issued by that DoD Component, or that it is not necessary to issue such guidelines at all, the DoD Component must:

(i) State the reasons for such omissions in writing.

(ii) Submit the reasons to the EDFR for review and approval.

(e) Pre-award compliance.--(1) Notice of lawsuits and compliance reviews. To show compliance with the requirements of section 504 of the Rehabilitation Act and this part regarding the program or activity receiving federal financial assistance, each applicant for DoD federal financial assistance must provide to the DoD Component award official in the application for federal financial assistance, who will furnish such submissions to ODEI upon written request:

(i) Notice of any lawsuit pending against the applicant alleging unlawful discrimination on the basis of disability.

(ii) A statement describing any civil rights compliance reviews regarding the applicant conducted during the two-year period before the application, and information concerning the agency or organization performing the reviews.

(iii) If the applicant has any information to report from paragraph (e)(1)(i) or (ii) of this section at the time the application is submitted, he or she must provide that information with the

application in accordance with any directions in the relevant notices of funding opportunity (e.g., program announcements, funding opportunity announcements, and broad agency announcements). If the announcement does not provide specific directions, applicants with information to report from paragraph (e)(1)(i) or (ii) at the time of proposal submission must include that information in the portion of the application that includes any certifications, representations, or assurances (e.g., attached to Block 18 of the Standard Form 424).

(2) Failure to file an adequate assurance. If an applicant for Federal financial assistance fails to file an adequate assurance in accordance with this section or an assurance which meets the requirements in 32 CFR 22.510(b) and appendix B, or breaches its terms, the DoD Component must:

- (i) Notify the applicant promptly of its noncompliance and state the reason for noncompliance.
- (ii) Make an immediate effort to secure voluntary compliance in accordance with § 56.28(f).

(3) Written determination of compliance. (i) Within the application processing period, the DoD Component will make a written determination of whether the applicant is in compliance with § 56.28(a) and inform the awarding official. In accordance with 32 CFR 22.420(c)(2), the grant officer is responsible for ensuring that the potential recipient has provided all assurances required by section 504 of the Rehabilitation Act and the implementing regulations unless they are to be addressed at the time of award, in accordance with 32 CFR 22.510(b).

(ii) The DoD Component will base its determination on the submissions required by paragraph (a) of this section and any other information the DoD Component receives during this time (including complaints) or has on file about the applicant.

(iii) When the DoD Component cannot make a determination on the basis of this information, the DoD Component may also conduct an on-site review. The DoD Component may request

additional information from the applicant, local government officials, or interested persons or organizations, including individuals with disabilities or organizations representing such individuals.

(iv) If, after examination, the DoD Component finds enough evidence to support a finding of noncompliance, it must seek voluntary compliance.

(4) Voluntary compliance. If the review indicates noncompliance with this part, an applicant may agree in writing to take the steps recommended by the DoD Component in order to come into compliance. The DoD Component must approve the written agreement before any award is made.

(5) Refusal to comply. If the applicant refuses to enter into such an agreement, the DoD Component must follow the procedure established by § 56.29.

(6) Deferment. A DoD Component may choose to defer action on an application for assistance pending initiation and completion of the procedures in § 56.29.

(i) An action may only be deferred for initial or non-continuing assistance applications.

(ii) An action may not be deferred if Federal financial assistance is due and payable pursuant to a previously-approved application.

(f) Periodic compliance reviews of recipients--(1) Periodic review of recipients. (i) The DoD Component or Director, ODEI, may conduct periodic nondiscrimination compliance reviews, including on-site reviews, of any recipient's programs or activities receiving Federal financial assistance, including requests for data and information.

(ii) Whenever possible, the DoD Components or Director, ODEI, should perform this periodic compliance review in conjunction with its review and audit efforts to implement, in programs or

activities receiving Federal financial assistance, similar CFR parts dealing with discrimination on the basis of race, color, sex, national origin, and age.

(2) Notice of review. After selecting a recipient for review or initiating an investigation, the DoD Component or Director, ODEI, must:

- (i) Notify the recipient of the nature of the review or investigation.
- (ii) Request relevant records for the review.
- (iii) If applicable, notify the recipient of its opportunity, before the determination is made, to make a written submission responding to, rebutting, or denying the allegations raised in the review or complaint.

(3) Post-review report. (i) The DoD Component or Director, ODEI, must deliver a written report to the recipient that includes:

- (A) Findings of fact and deficiencies.
 - (B) Recommendations for achieving voluntary compliance.
 - (C) The determination of the recipient's compliance status.
 - (D) Notice of the recipient's right to engage in compliance negotiation, if applicable.
- (ii) The DoD Component's civil rights program official should approve the reports.
 - (iii) The DoD Component must forward reports of findings of noncompliance to the U.S.

Assistant Attorney General for the Civil Rights Division of the DOJ, the EDFR, and ODEI.

(g) Requests for data and information from or investigations by recipients. (1) If necessary, the DoD Component may require recipients to:

- (i) Submit records or data and information specific to certain programs or activities to determine if a program or activity receiving Federal financial assistance is in compliance with this part.

- (ii) Investigate a complaint alleging unlawful discrimination on the basis of a disability in a program or activity receiving Federal financial assistance.
 - (2) Requests must be limited to data and information relevant in determining compliance and must be accompanied by a written statement summarizing the complaint or setting forth the basis for the belief that unlawful discrimination on the basis of disability may exist.
 - (3) A DoD Component conducting a compliance review or investigating a complaint of a violation of the procedures in this part must notify any other affected agency upon discovery of its jurisdiction and inform the agency of the findings made. Such reviews or investigations may be conducted jointly between the DoD Component and other affected agency.
 - (4) If a DoD Component requests that a recipient investigate a complaint, the DoD Component is still responsible for ensuring that the complaint is resolved in accordance with this part.
 - (h) Reports. (1) Recipients (through DoD Components) and DoD Components must submit annual reports to ODEI:
 - (i) Listing all programs and activities receiving Federal financial assistance subject to this part.
 - (ii) Summarizing the complaint information required by § 56.28.
 - (iii) Containing the information submitted by recipients in accordance with paragraphs (e)(1)(i) and (ii) of this section.
 - (2) Additionally, within 5 business days of commencing any of the actions in § 56.29, DoD Components must notify ODEI, in writing.
- § 56.29 Complaint resolution and enforcement procedures applicable to recipients of Federal financial assistance.**

(a) Applicability.(1) Except as provided in paragraph (a)(2) of this section, this section applies to all allegations of discrimination on the basis of disability under section 504 of the Rehabilitation Act in programs, services, or activities receiving Federal financial assistance.

(2) Complaints alleging violations of section 504 of the Rehabilitation Act with respect to employment will be processed in accordance with the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1640 and § 56.29(b).

(b) Enforcement procedures. The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (“Title VI”) apply to these section 504 regulations. The procedures at 32 CFR 195.7 through 195.12 are hereby adopted.

§ 56.30 Complaint resolution and enforcement procedures applicable to programs and activities conducted by DoD components.

(a) Applicability. (1) Except as provided in paragraph (a)(2) of this section, this section applies to all allegations of discrimination on the basis of disability in violation of section 504 of the Rehabilitation Act in a program or activity conducted by a DoD Component.

(2) DoD shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by EEOC in 29 CFR part 1614 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(3). This section also applies to all complaints alleging a violation of a DoD Component’s responsibility to procure information and computer technology in compliance with section 508.

(b) Filing a complaint--(1) Who may file. An individual, alone or through a representative, may file a written complaint with ODEI in accordance with the procedures prescribed in this section on any of the following grounds:

(i) He or she has been subjected to discrimination prohibited by section 504 of the Rehabilitation Act in a program or activity conducted by a DoD Component.

(ii) The DoD Component has failed to make information and communication technology accessible to individuals with disabilities in accordance with section 508 of the Rehabilitation Act.

(iii) He or she is a member of a specific class of individuals that has been subjected to discrimination prohibited by section 504 of the Rehabilitation Act or denied accessible information and communication technology in violation of section 508 of the Rehabilitation Act.

(2) Exhaustion. A complainant will first exhaust informal administrative procedures in paragraph (b)(3) of this section before filing a formal complaint.

(3) Informal complaints. (i) Before filing a formal complaint with ODEI alleging discrimination on the basis of disability in violation of section 504 of the Rehabilitation Act, the complainant must attempt to resolve the complaint informally with the DoD Component.

(ii) Before filing a formal complaint with ODEI alleging a failure to make information and communication technology accessible to individuals with disabilities in violation of section 508 of the Rehabilitation Act, an individual with a disability must use the informal procedures for resolving issues and concerns with the DoD Component in accordance with DoD Manual 8400.01, “Accessibility of Information and Communications Technology (ICT),” (November 14, 2017).

(iii) The process for resolving informal complaints may include the use of a mediator.

(4) Confidentiality. DoD officials must hold in confidence the identify of any person submitting a complaint, unless the person submits written authorization otherwise or except to the extent

necessary to carry out the purposes of this section, including the conduct of any investigation, hearing, or proceeding conducted pursuant to this section.

(5) When to file. An individual must file a formal complaint with ODEI no later than 30 calendar days after he or she receives a decision denying the requested relief under the informal complaint procedure in paragraph (b)(3) of this section, or 180 calendar days after the date of the alleged discrimination or failure to make information and communication technology accessible, whichever date is later, unless the time for filing is extended by ODEI, in its sole discretion. For purposes of determining when a complaint is timely filed under this paragraph, a complaint mailed to ODEI will be considered filed on the date it is postmarked. Any other complaint will be considered filed on the date it is received by the agency.

(6) How to file. Complaints alleging a violation of sections 504 or 508 of the Rehabilitation Act may be emailed, mailed, or delivered in person to ODEI. If any other official receives a complaint, he or she must forward the complaint to ODEI, within five calendar days. ODEI must submit a copy of any complaint alleging a failure to make information and communication technology accessible in violation of section 508 of the Rehabilitation Act to the DoD CIO within seven days of receipt.

(7) Notification to U.S. Access Board. In accordance with paragraph (g)(2) of this section, ODEI will promptly send to the U.S. Access Board any complaint alleging that a building or facility that is subject to the ABA or section 502 of the Rehabilitation Act is not readily accessible to and usable by individuals with disabilities.

(8) Acceptance of complaint. For the complaint to be complete, it must contain:

(i) The complainant's contact information, including name, postal address and, if available, e-mail address, and telephone number, if available.

(ii) The basis of the complaint, including:

(A) In the case of a complaint involving section 504 of the Rehabilitation Act, a detailed description of the alleged unlawful discrimination, on the basis of disability, that contains sufficient information to understand the facts that led the complainant to believe that discrimination occurred and when the discrimination took place. The description should include the how, why, where, and when of the alleged discrimination.

(B) In the case of a complaint by a DoD employee or member of the public involving section 508 of the Rehabilitation Act, a detailed description of the alleged violation that contains sufficient information to understand the facts that led the complainant to believe that the violation occurred and when the violation took place, if known. The description should include the how, why, where, and when of the alleged violation.

(C) The nature of the individual's disability, insofar as it relates to a complaint involving section 504 of the Rehabilitation Act.

(D) Identification of the individual, agency, or organization alleged to have discriminated unlawfully on the basis of disability or failed to make information and communication technology accessible. At a minimum, include the name and address.

(iii) The complainant's electronic or physical signature.

(iv) The names of and basic contact information for any individuals, if known, that the investigating agency could contact for additional information to support or clarify the complainant's allegations.

(9) Maintenance of a log. (i) DoD Components must maintain a log of informal complaints filed with the Component involving sections 504 and 508 of the Rehabilitation Act. Each entry should identify:

- (A) Each complainant described in the informal complaint.
 - (B) The individual, party, or organization charged with the alleged discriminatory behavior or failure to make electronic or information technology accessible.
 - (C) The nature of the informal complaint.
 - (D) The date the informal complaint was filed.
 - (E) The current status or disposition, including the date, of the informal complaint investigation.
 - (F) Other pertinent information, such as resolution of the informal complaint, a formal complaint being filed, and the date the informal complaint was closed.
- (ii) ODEI must maintain a log of formal complaints filed with ODEI consistent with the requirements identified in paragraph (b)(9)(i) of this section.
- (c) Receipt of complaints. Upon receiving a formal complaint alleging discrimination on the basis of disability or failure to make information and communication technology accessible by a DoD employee or a member of the public, the Director, ODEI must:
- (1) Evaluate the complaint to determine whether the complaint:
 - (i) May be dismissed without investigation for failure to state a claim, in accordance with paragraph (b)(8) of this section. The Director, ODEI must notify the complainant, the DoD Component, and the DoD CIO (where appropriate), in writing, if the complaint is dismissed without investigation.
 - (ii) Will not be investigated because the complaint lacks good cause to investigate.
 - (A) Examples of a complaint that lacks good cause to investigate include a complaint that:
 - (1) Is already the basis of a pending civil action in a United States District Court.
 - (2) Is moot or premature.
 - (3) Alleges dissatisfaction with the processing of a previously-filed complaint.

(4) Is filed as part of a clear pattern of misuse of the complaint process for a purpose other than the prevention and elimination of discrimination on the basis of disability. A clear pattern of misuse of the complaint process requires:

(i) Allegations that are similar or identical, lack specificity, or involve matters previously resolved; or

(ii) Evidence of circumventing other administrative processes, retaliating against the DoD Component's in-house administrative processes, or overburdening the complaint system.

(B) ODEI must notify the complainant, the DoD Component, the DoD Component CIO and the DoD CIO, where appropriate, if it does not refer the complaint for investigation because the complaint lacks good cause. The notice must be in writing and include ODEI's reason for not referring the complaint.

(iii) Requires additional information for the DoD Component to begin an investigation. Within 30 calendar days of receipt of the complaint, ODEI must request any additional information needed from a complainant to fulfill the requirements of paragraph (b)(8) of this section. If ODEI does not receive this additional information within 30 calendar days of the request, the complaint may be dismissed.

(2) Refer complaints that are complete in accordance with paragraph (b)(8) of this section within seven days to the appropriate DoD Component or Components for investigation unless, in accordance with paragraph (d)(1) of this section, ODEI retains responsibility for conducting the investigation.

(3) With respect to a complaint alleging a violation of section 508 of the Rehabilitation Act, transmit an information copy of the complaint to the DoD CIO within seven days of receipt.

(4) Forward complaints alleging discrimination on the basis of disability or failure to make information and communication technology accessible that should have been filed with another government agency to the correct agency, in accordance with paragraph (g) of this section.

(5) Send written notification to the complainant, if ODEI does not refer the complaint for investigation in accordance with paragraphs (c)(1)(i), (ii), or (c)(4) of this section.

(d) Investigation of complaints.--(1) Prompt investigation. If ODEI determines that the complainant has adequately stated a claim of unlawful discrimination in violation of section 504 of the Rehabilitation Act or failure to make information and communication technology accessible in violation of section 508 of the Rehabilitation Act, it must delegate the responsibility to conduct a prompt investigation to the DoD Component or, at the discretion of ODEI, retain responsibility for conducting the investigation:

(i) Of all accepted complaints filed in accordance with this part.

(ii) Following the procedures in this section.

(iii) Unless all parties agree to delay the investigation pending settlement negotiations.

(2) Report of investigation. (i) Within 180 calendar days of receipt of the complaint, the DoD Component or ODEI, whichever agency has conducted the investigation, must prepare a report of investigation, including a written recommended administrative decision, in accordance with paragraph (f) of this section. Within the 180 calendar day time period, ODEI may grant an extension of not more than 90 calendar days. The DoD Component may unilaterally extend the time period or any period of extension for not more than 30 calendar days where it must sanitize a complaint file that may contain information classified as secret pursuant to Executive Order 12356 in the interest of national security. The DoD Component must notify all involved parties and ODEI of any such extension.

(ii) The report of investigation should include:

(A) Complaint claim and allegations.

(B) Procedural history.

(C) Findings of fact.

(D) Names of individuals interviewed during the investigation.

(E) Evidence reviewed.

(F) Investigation assessment.

(G) Analysis and determinations.

(H) Additional relevant information.

(I) Investigator's recommendation for disposition.

(e) Voluntary compliance. (1) At the completion of an investigation in accordance with paragraph (d) of this section, if the DoD Component or ODEI, whichever agency has conducted the investigation, has made a finding of noncompliance, the DoD Component may voluntarily agree to come into compliance.

(2) If the DoD Component and ODEI (after consultation with the DoD CIO in the case of complaints alleging violation of section 508 of the Rehabilitation Act) reach a mutually-satisfactory resolution of the complaint:

(i) The agreement must be in writing and signed by ODEI and the DoD Component head.

(ii) The DoD Component must send a copy of the signed settlement to the complainant and notify the complainant of his or her right to pursue relief in U.S. district court.

(f) Final administrative decision--(1) Recommended administrative decision. (i) When the investigation is performed by a DoD Component in accordance with paragraph (d) of this section:

(A) At the completion of the investigation resulting in a finding of compliance or a finding of noncompliance and completion of efforts to secure voluntary compliance in accordance with paragraph (e) of this section, the DoD Component must:

(1) Coordinate with the DoD Component's legal counsel.

(2) Provide ODEI with the report of investigation, including the recommended administrative decision.

(B) ODEI will review the DoD Component's recommended administrative decision and accept, reject, or modify the recommended administrative decision based on the report of investigation prepared by the DoD Component or, if necessary, based on additional investigation conducted by ODEI or the DoD Component pursuant to a request by ODEI.

(ii) When the investigation is performed by ODEI, it must recommend an administrative decision after coordinating with ODEI's legal counsel.

(2) Final administrative decision. After reviewing ODEI's recommended administrative decision, which may include justifications for accepting, rejecting, or modifying the recommended administrative decision by the DoD Component, the USD(P&R) may:

(i) Request further investigation by the DoD Component or ODEI.

(ii) Issue a DoD final administrative decision which includes a finding of noncompliance by the DoD Component and requires the DoD Component to take appropriate corrective action by an identified suspense date, to include establishing a monitoring plan that will continue until the corrective action is completed, in accordance with this section.

(iii) Issue a DoD final administrative decision in which the DoD Component is found to be in compliance.

(iv) Issue, as the need arises, affirmative recommendations regarding exemplary practices and proactive measures that could reduce the risk of future complaints.

(3) Notice. After the USD(P&R) issues the final administrative decision, ODEI must notify the complainant in writing of the final administrative decision. The written notice must include notice of the complainant's right to appeal the decision to a U.S. district court of competent jurisdiction in the case of unlawful discrimination on the basis of disability in violation of section 504 of the Rehabilitation Act or a failure to make information and communication technology accessible to individuals with disabilities in violation of section 508 of the Rehabilitation Act.

(g) Coordination with other agencies--(1) Cooperation with other agencies. If, while conducting a compliance review or investigation of a complaint, it becomes evident that another agency has joint jurisdiction over the subject matter, the DoD Component will cooperate with that agency during the investigation. Pursuant to 28 CFR 42.413, the DoD Component must:

(i) Forward the complaint to the other agency, if it determines that the complaint was filed incorrectly with the DoD.

(ii) Coordinate its efforts with the other agency, to the extent consistent with the Federal statutes under which the assistance is provided.

(iii) Designate one of the agencies, via written delegation agreement, to be the lead agency for this purpose. When an agency other than ODEI serves as the lead agency, any action taken, requirement imposed, or determination made by the lead agency must have the same effect as though the action had been taken by ODEI. Both agencies must adopt written procedures to assure that the same standards of compliance with sections 504 and 508 of the Rehabilitation Act are used at the operational levels by each of the agencies.

(2) Cooperation with the U.S. Access Board. The U.S. Access Board and Deputy USD(P&R) will enter into an agreement regarding the referral and resolution of complaints relating to accessibility of DoD facilities under the ABA.

(h) Coordination between DoD components. When two or more DoD Components have joint responsibility for a program or activity, the DoD Components may negotiate a proposed written delegation agreement.

(1) The delegation agreement must:

(i) Assign responsibility to one of the DoD Components to ensure compliance with this part.

(ii) Provide for the notification to responsible program officials of the assignment of enforcement responsibility.

(2) No delegation agreement will be effective until it is approved in writing by the USD(P&R).

(i) Prevention and resolution of complaints. The DoD Component equal opportunity officials and DoD Component section 508 program managers will facilitate, with ODEI, pre-complaint resolution of claims of unlawful discrimination on the basis of disability and failure to make information and communication technology accessible in violation of sections 504 or 508 of the Rehabilitation Act.

(j) Periodic compliance reports of Components. (1) ODEI is overall responsible for implementation of this part and the conduct of investigations and compliance reviews, including with respect to compliance with section 508 of the Rehabilitation Act.

(2) Whenever possible, ODEI will perform this periodic compliance review in conjunction with its review and audit of similar regulations concerning nondiscrimination on the basis of race, color, sex, national origin, and age in programs or activities conducted by a Component.

(3) If, as a result of an investigation or in connection with any other compliance activity, ODEI determines that a DoD Component appears to be in noncompliance with its responsibilities pursuant to this part, ODEI will undertake appropriate action with the DoD Component to assure compliance.

(4) In the event that ODEI and the DoD Component are unable to agree on a resolution of any particular matter, the matter will be submitted to the USD(P&R) for resolution.

§ 56.31 Complaint resolution and enforcement procedures applicable to accessibility of information and computer technology.

(a) Applicability. This section applies to all complaints alleging a violation of a DoD Component's responsibility to procure information and communication technology in compliance with section 508, whether filed by members of the public or DoD employees.

(b) Enforcement procedures. DoD Components will process complaints alleging violations of section 508 of the Rehabilitation Act according to the procedures at § 56.30.

Dated: June 11, 2020.

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[FR Doc. 2020-12999 Filed: 7/15/2020 8:45 am; Publication Date: 7/16/2020]